

UT 06-6

Tax Type: Use Tax

Issue: Use Tax On Out-Of-State Purchases Brought Into Illinois

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**JOHN DOE,**

Taxpayer

No. 00-ST-0000  
IBT: 0000-0000  
NTL: 00 00000000000000  
John E. White,  
Administrative Law Judge

**RECOMMENDATION FOR DISPOSITION**

**Appearances:** *John Doe* appeared *pro se*; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

**Synopsis:**

This matter arose when *John Doe* (*Doe* or taxpayer) protested a Notice of Tax Liability (NTL) the Illinois Department of Revenue (Department) issued to him to assess use tax regarding his purchase of a motor vehicle for use in Illinois. The issues are whether taxpayer's purchase was subject to use tax, and if so, whether the penalty assessed for late filing of the appropriate return should be abated for reasonable cause.

The hearing was held via telephone at the Department's offices in Chicago. *Doe* offered evidence in the form of documents and his own testimony. I have reviewed that evidence, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the first issue be resolved in favor of the Department, but that the penalty be abated.

**Findings of Fact:**

1. Beginning in early June 2002, *Doe* was assigned by his employer to work temporarily in Illinois. Taxpayer Ex. 5 (copy of Transfer Action Notice); *Doe* testimony (After being advised that he could be granted a continuance because a court reporter was not available, *Doe* advised that he would prefer to proceed to hearing on that date, even without a court reporter. Thus, page numbers for a transcript where certain testimony is transcribed do not exist for this record).
2. *Doe's* temporary assignment was extended, in May 2003, through August 2004. *Doe* testimony.
3. During the time *Doe* was working on temporary assignment in Illinois, he lived in an apartment in Schaumburg, Illinois. Taxpayer Ex. 1 (copy of Notice of Proposed Tax Due bearing *Doe's* Schaumburg temporary address); *Doe* testimony.
4. During the time he was working on temporary assignment in Illinois, *Doe* was a resident of California. Taxpayer Exs. 3 (copy of 6/13/06 statement from Countrywide Home Loans to *Doe* detailing, *inter alia*, mortgage, home insurance, and county property tax payments by *Doe* for residence in San Mateo County, California), 6, p. 4 (copy of *Doe's* California driver's license).
5. In early March 2003, *Doe* purchased a 2002 Porsche 2-door that bore a VIN of 000000000000000000. Taxpayer Ex. 6, pp. 1-3 (copies of, respectively: California Vehicle Registration card for *Doe's* 2002 Porsche, valid from 5/13/2003 through 5/14/2004; copy of California Temporary Driving Permit for *Doe's* 2002 Porsche, through July 2003; copy of State of California Evidence of Insurance Card for *Doe's* 2002 Porsche, effective 3/7/2003).

6. *Doe* first took possession of the Porsche in Illinois. *Doe* testimony.
7. *Doe* registered the vehicle in California. Taxpayer Ex. 6, p. 1.
8. *Doe* obtained a California temporary driving permit for the vehicle, effective through July 2003. Taxpayer Ex. 6, p. 2.
9. *Doe* insured the Porsche in California, effective 3/7/03. *Id.*, p. 3.

### **Conclusions of Law:**

Illinois' Use Tax Act (UTA) imposes a tax "upon the privilege of using in this State tangible personal property purchased at retail from a retailer ...." 35 **ILCS** 105/3. The Illinois General Assembly incorporated into the UTA certain provisions of the Retailers' Occupation Tax Act (ROTA). 35 **ILCS** 105/11. Among them is § 4 of the ROTA, which provides that the Department's determination of tax due constitutes prima facie proof that tax is due in the amount determined by the Department. 35 **ILCS** 105/12; 35 **ILCS** 120/4. In this case, the Department established its prima facie case when it introduced Department Exhibit 1, consisting of a copy of the NTL, under the certificate of the Director. Department Ex. 1. That exhibit, without more, constitutes prima facie proof that *Doe* owes Illinois use tax in the amount determined by the Department. 35 **ILCS** 105/12; 35 **ILCS** 120/4.

*Doe* claims that his purchase was exempt from Illinois use tax, pursuant to § 3-55(h), which provides:

3-55. Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

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h) Except as provided in subsection (h-1), the use, in this State, of a motor vehicle that was sold in this State to a nonresident, even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit is issued to the motor vehicle as provided in Section 3-603 of

the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state. The issuance of the drive-away permit or having the out-of-state registration plates to be transferred shall be prima facie evidence that the motor vehicle will not be titled in this State.

35 ILCS 105/3-55(h).

He also argues that his purchase of the Porsche is exempt pursuant to § 3-5(5) of the UTA, which provides, in pertinent part:

§ 3-5. Exemptions. Use of the following tangible personal property is exempt from the tax imposed by this Act:

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(5) Until July 1, 2003, a passenger car that is a replacement vehicle to the extent that the purchase price of the car is subject to the Replacement Vehicle Tax.

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35 ILCS 105/3-5(5).

I address taxpayer's second argument first. *Doe* asserts that the Porsche was a replacement vehicle because he purchased it to replace the Ferrari he previously owned and which he sold in 2002, approximately seven months before he purchased the Porsche. Taxpayer Exs. 2, 7; *Doe* testimony. *Doe*'s reading of § 3-5(5) of the UTA suggests that the Illinois General Assembly intended to make tax free the use of any vehicle purchased by anyone to take the place of another vehicle previously sold or otherwise disposed of by that purchaser. I cannot agree that "replacement vehicle," as used in UTA § 3-5(5), means what *Doe* wants it to mean. That is because the legislature used the term in an exemption provision that is limited to the amount of the tax imposed by the Replacement Vehicle Tax Act (RVTA). 625 ILCS 5/3-2001 to 3-2006 (2005). Thus, under the plain text of that specific exemption, the term "replacement vehicle" is better understood as a term of art whose definition is governed by the RVTA. Under § 2001 of that Act, a replacement vehicle is "any passenger car, as defined in Section 1-157 of ... [the Illinois

Vehicle] Code, purchased in Illinois by or on behalf of an insurance company to replace a passenger car of an insured person in settlement of a total loss claim.” 625 ILCS 5/3-2001. This record clearly shows that *Doe* sold a Ferrari, which is the vehicle he claims he acquired the Porsche to replace, to another individual for over \$38,000. Taxpayer Ex. 7. Therefore, I cannot conclude that the Porsche was “a vehicle purchased in Illinois by or on behalf of an insurance company to replace a passenger car of an insured person in settlement of a total loss claim.” 625 ILCS 5/3-2001.

I move now to *Doe*’s primary argument. In Illinois, as in California, an owner is required to register a motor vehicle with the state in order to obtain license plates for the vehicle. 625 ILCS 5/3-405; Cal. Veh. Code §§ 4000 (registration of vehicles required), 4150 (application for vehicles other than motorcycles), 4152 (permitting registration of vehicle situated outside California by a California registered owner/resident). Registering a vehicle is a process that requires a state agency (in Illinois, the Secretary of State (SOS), and in California, the Department of Motor Vehicles (DMV)) to review and approve a person’s registration application. I take official notice that the act of registering a vehicle takes time. To allow the applicant to legally operate the vehicle between the time the applicant submits the registration application to the appropriate agency until the plates are actually delivered to the registered owner of the vehicle, the Illinois SOS tenders to the applicant a temporary permit (625 ILCS 5/3-407), whereas the California DMV tenders a temporary operating permit. *See* Taxpayer Ex. 6, p. 2. Here, as a resident of California, *Doe* registered the Porsche with the California Department of Motor Vehicles after he purchased it, and he obtained a California temporary driving permit for the vehicle. Taxpayer Ex. 6, pp. 1-2; *Doe* testimony. He also obtained

insurance for the Porsche, and proof of insurance in the form of a State of California Evidence of Insurance Card, immediately upon its purchase. Taxpayer Ex. 6, p. 3.

Section 3-55(h) provides that the exemption is available for “the use, in this State, of a motor vehicle that was sold in this State to a nonresident, even though the motor vehicle is delivered to the nonresident in this State, if the motor vehicle is not to be titled in this State, and if a drive-away permit is issued to the motor vehicle as provided in Section 3-603 of the Illinois Vehicle Code or if the nonresident purchaser has vehicle registration plates to transfer to the motor vehicle upon returning to his or her home state.” 35 **ILCS** 105/3-55(h). The text of the last clause of the first sentence uses the word “or,” reflecting an alternative. *Doe*’s purchase and use of the Porsche may thus be subject to the exemption if either: a drive-away permit was issued for the Porsche as provided in Section 3-603 of the Illinois Vehicle Code (IVC), or if *Doe* had vehicle registration plates to transfer to the Porsche upon returning to California. 35 **ILCS** 105/3-55(h). Here, the evidence clearly reflects that *Doe* applied for California registration plates for the Porsche, and obtained a California temporary operating permit for it. Taxpayer Ex. 6, pp. 1-2. Thus, the record supports a conclusion that *Doe* had “vehicle registration plates to transfer to the motor vehicle upon returning to his ... home state.” Taxpayer Ex. 6, pp. 1-2; 35 **ILCS** 3-55(h).

The applicable exemption further provides that “having the out-of-state registration plates to be transferred shall be prima facie evidence that the motor vehicle will not be titled in this State.” 35 **ILCS** 105/3-55(h). In sum, using documentary evidence and testimony that is consistent with that documentary evidence and which is not so incredible as to be unworthy of belief, *Doe* has established that he was a nonresident of Illinois, that the Porsche was not intended to be titled in Illinois, and that he had vehicle registration plates to transfer to the motor vehicle upon returning to his home state. 35 **ILCS** 105/3-55(h).

Unfortunately for *Doe*, § 3-55(h) also clearly provides an exception to the exemption, which exception is set forth in § 3-55(h-1). 35 **ILCS** 105/3-55(h) (“Except as provided in subsection (h-1), ...”). Section 3-55(h-1) provides, in pertinent part:

(h-1) The exemption under subsection (h) does not apply if the state in which the motor vehicle will be titled does not allow a reciprocal exemption for the use in that state of a motor vehicle sold and delivered

in that state to an Illinois resident but titled in Illinois. The tax collected under this Act on the sale of a motor vehicle in this State to a resident of another state that does not allow a reciprocal exemption shall be imposed at a rate equal to the state's rate of tax on taxable property in the state in which the purchaser is a resident, except that the tax shall not exceed the tax that would otherwise be imposed under this Act. \*\*\*

35 ILCS 105/3-55(h-1).

I take note that California, the state in which *Doe* presumably titled the Porsche (Taxpayer Ex. 6), does not provide an exemption from its use tax that is similar to § 35 ILCS 105/3-55(h). *See* Cal. Rev. & Tax. Code §§ 6281-6285 (special exemption for vehicles), 6401-6411 (exemptions from use tax). Thus, the first clause of UTA § 3-55(h) expressly removes *Doe* from that provision's intended beneficiaries. I conclude, therefore, that *Doe* has not rebutted the prima facie correctness of the Department's determination that his use of the Porsche in Illinois was subject to Illinois Use Tax.

I now proceed to the question whether reasonable cause exists to abate the penalty assessed in the NTL. Section 3-8 of the Uniform Penalty and Interest Act (UPIA) provides, *inter alia*, that, "[t]he penalt[y] imposed ... [by] ... § 3-3 ... of this Act ... shall not apply if the taxpayer shows that his failure to file a return ... was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department." 35 ILCS 735/3-8. *Doe* argues that it was reasonable for him to believe that he did not owe use tax regarding his purchase of the Porsche, since he was not a resident of Illinois and since he always intended to register that vehicle in California, his state of residence. *Doe* testimony.

The Department has promulgated a regulation in which it defined reasonable cause and described how it would administer the UPIA. 86 Ill. Admin. Code § 700.400. That regulation provides, *inter alia*, "... whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to

abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file and pay his proper liability in a timely fashion.” 86 Ill. Admin. Code § 700.400(b); *see also* PPG Industries, Inc. v. Department of Revenue, 328 Ill. App. 3d 16, 22-23, 765 N.E.2d 34, 40 (1<sup>st</sup> Dist. 2002).

The regulation further provides that, “[a] taxpayer will be considered to have made a good faith effort to determine and file and pay his proper tax liability if he exercised ordinary business care and prudence in doing so. A determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer’s experience, knowledge, and education. Accordingly, reliance on the advice of a professional does not necessarily establish that a taxpayer exercised ordinary business care and prudence, nor does reliance on incorrect facts such as an erroneous information return.” 86 Ill. Admin. Code § 700.400(c).

I agree with *Doe*’s argument that the evidence supports his argument it was reasonable for him to believe that he did not have to register the vehicle in Illinois, or to pay Illinois use tax regarding his purchase of the Porsche. As the regulation provides, a determination of whether a taxpayer exercised ordinary business care and prudence is dependent upon the clarity of the law or its interpretation and the taxpayer’s experience, knowledge, and education. 86 Ill. Admin. Code § 700.400(c). Here, *Doe* offered credible evidence that he was not an Illinois resident, and that he intended to and subsequently did register, and presumably title, the Porsche in California, his state of residence. Taxpayer Exs. 3, 6. It does not seem unreasonable for a non-lawyer who performed the activities *Doe* engaged in here to believe that he was not required to register the vehicle in Illinois. California law allowed a California resident to register a motor vehicle with the



California DMV, even though the vehicle was currently outside California. Cal. Veh. Code §§ 4152. And often, though not always, taxability based on one's use of a motor vehicle will depend upon where the vehicle will be registered and/or titled. *See* 35 ILCS 105/9 (returns "with respect to motor vehicles, watercraft, aircraft, and trailers that are required to be registered with an agency of this State,"); *see also* 625 ILCS 5/3-104(f) (application for certificate of title to vehicle requires proof that use tax or vehicle use tax has been paid or that the vehicle is exempt)). I cannot conclude that *Doe* acted unreasonably in believing, at the time he insured and applied to register his Porsche in California (*see* Taxpayer Ex. 6), that he was also required to file an Illinois use tax return, and pay Illinois use tax, regarding his purchase and use of that vehicle. Thus, I recommend that the late filing penalty assessed against *Doe* be abated.

**Conclusion:**

I recommend that the Director revise the NTL to eliminate the penalty, and that the NTL be finalized as so revised.

Date: 8/2/2006

John E. White  
Administrative Law Judge